UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AERITAS, LLC, Plaintiff v. **DARDEN RESTAURANTS, INC.** Defendant	**Case No. 6:20-cv-00938** **JURY TRIAL DEMANDED**

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC ("Aeritas" or "Plaintiff") files this Complaint for patent infringement against Darden Restaurants, Inc. ("Darden Restaurants" or "Defendant"), and alleges as follows:

NATURE OF THE ACTION

1.   This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq*.

PARTIES

2.   Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3.   Upon information and belief, Darden Restaurants, is a corporation organized and existing under the laws of the State of Florida with a principal place of business at 1000 Darden Center Dr Orlando, Florida 32837.   Defendant operates businesses in multiple locations in this jurisdiction including, but not limited to at in this judicial district at 32837.

JURISDICTION AND VENUE

4.   This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5.   Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6.   Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendant has committed acts of infringement and has regular and established places of business in this judicial district.

OVERVIEW OF THE OLIVE GARDEN APP

7.   Defendant provides for its customers use the Olive Garden App, which is available for use with iOS and Android devices:

https://apps.apple.com/us/app/olive-garden-italian-kitchen/id1067313166

Olive Garden Italian Kitchen

Darden Restaurants, Inc.   Food & Drink   ★ ★ ★ ★ ⯪ 6,842 👤

E Everyone

ⓘ This app is compatible with all of your devices.

🔖 Add to Wishlist   **Install**
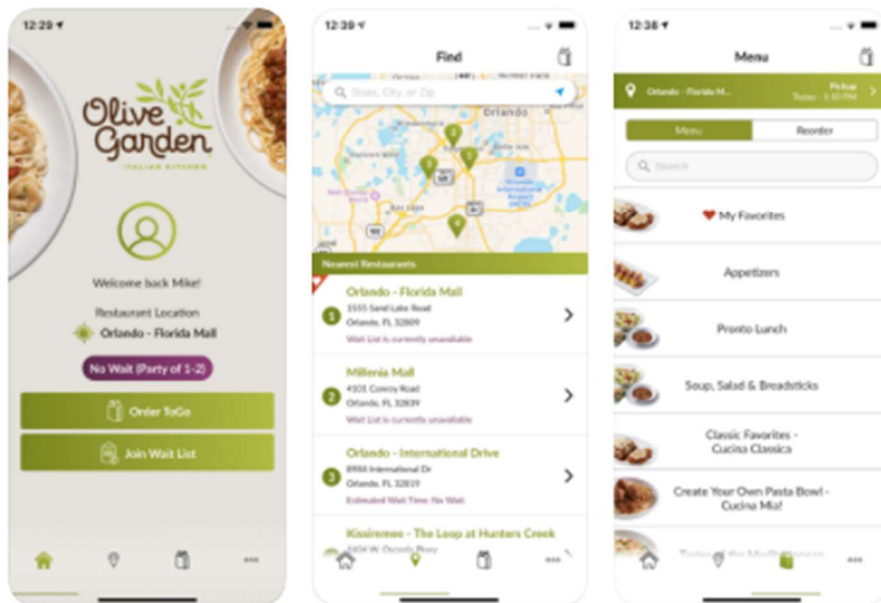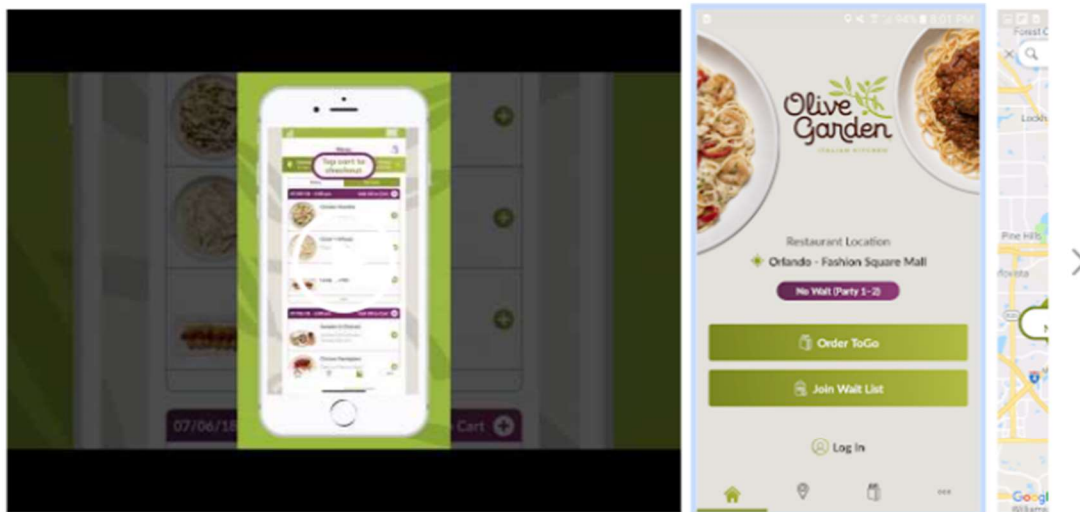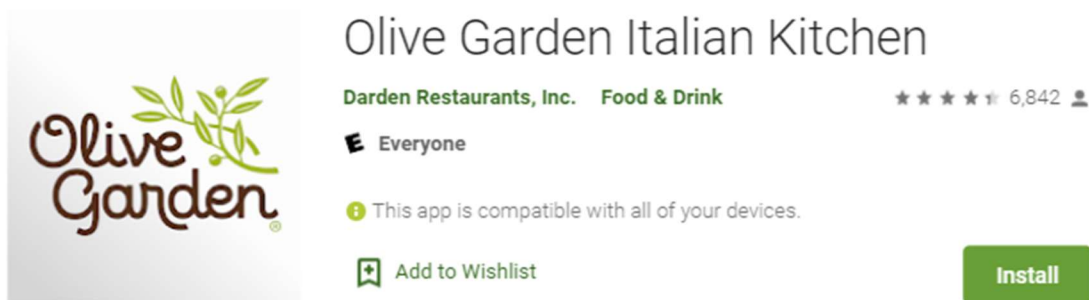
The Olive Garden app conveniently brings your favorites to your fingertips. Find real-time directions to
your nearest Olive Garden, browse the menu, place and save ToGo orders, save your spot on the Wait
List and more, all within a few taps.

https://play.google.com/store/apps/details?id=com.darden.mobile.olivegarden&hl=en_US

      8.   The Olive Garden App relies on a remote server to function, which executes

programming instructions to provide a rules engine.
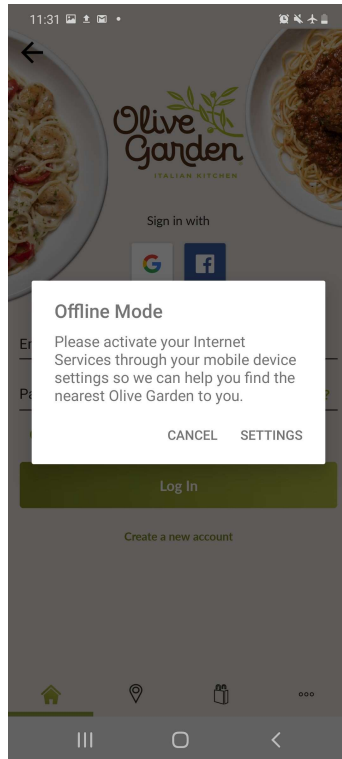
9.   The Olive Garden App provides an indication of permission to provide the

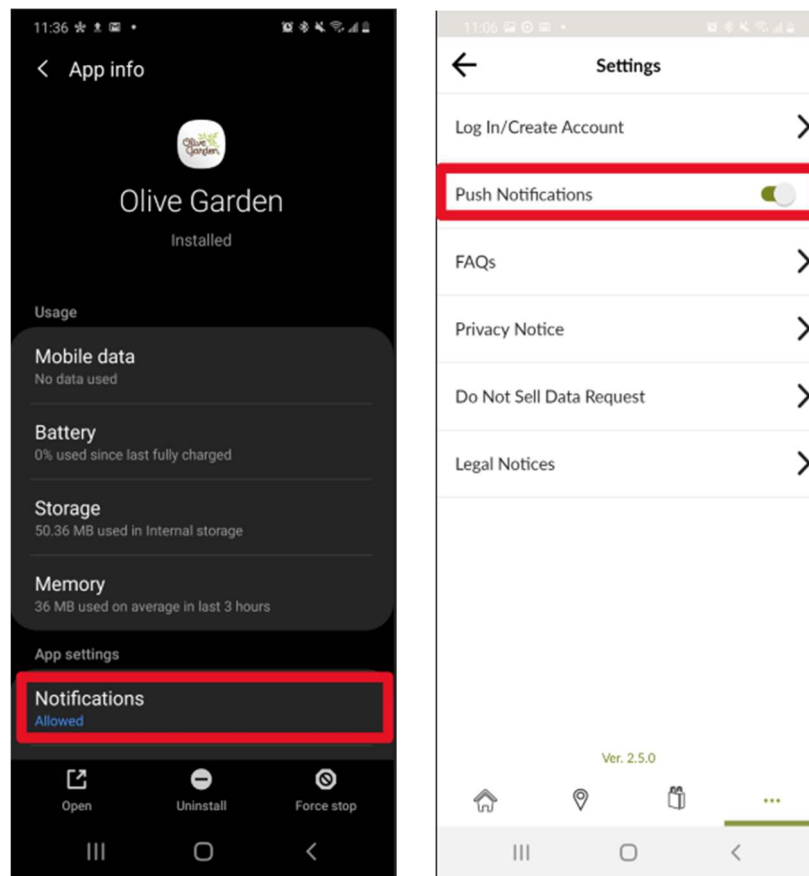mobile device a notification with an associated notification criterion.

https://developer.android.com/guide/topics/permissions/requesting.html

https://developer.android.com/guide/topics/permissions/normal-permissions.html

10.   In order to operate properly, the Olive Garden server obtains permission to access the mobile device's location.
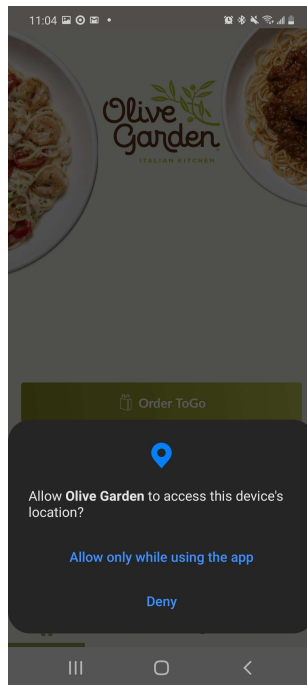
11.   If the user's device is located near an Olive Garden location that does not have any Join Wait list availability, the Olive Garden App provides a notification that the user must select a new location.
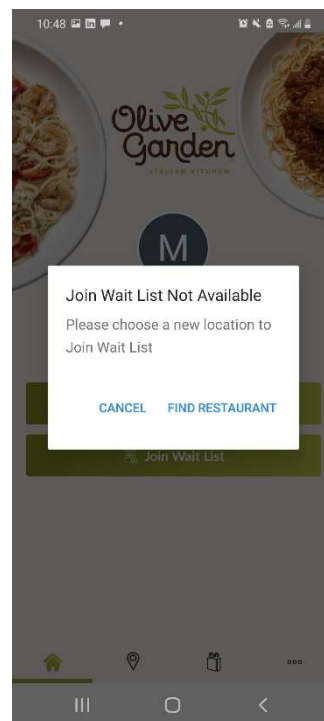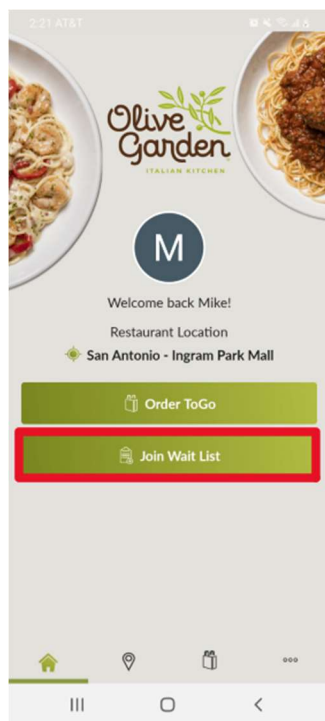
12.   After the user's device receives a notification, the Olive Garden server receives additional data in the form of a touchscreen input.
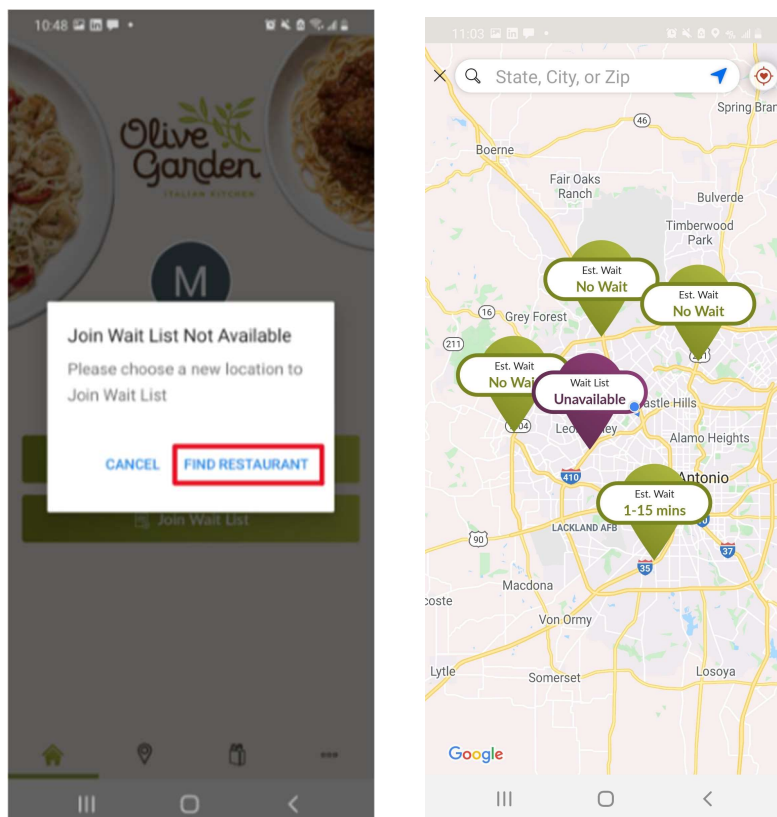
13.   After tapping on a notification option, the Olive Garden App displays a map of restaurant locations based on retrieved information.
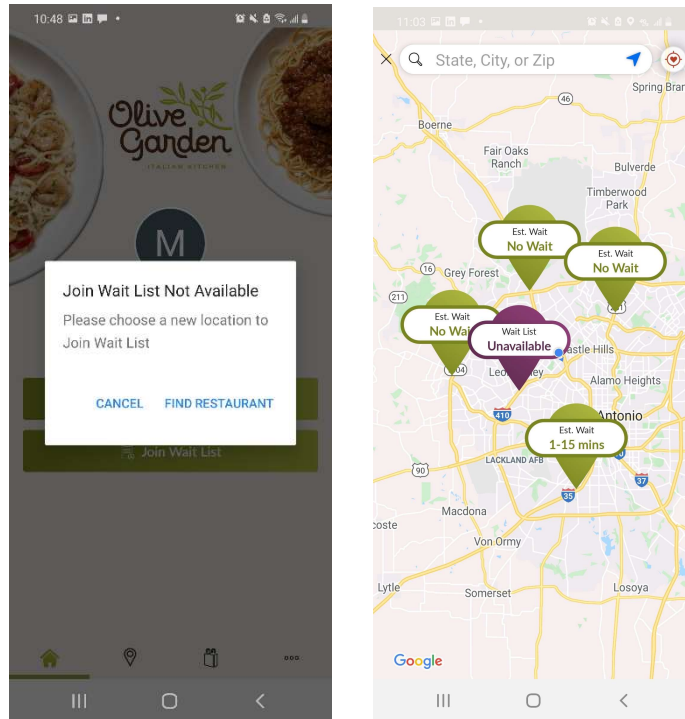
14.   When the user selects an Olive Garden location that is not accepting the user to Join the Wait List, the Olive Garden App provides the user a visual notification indicating the user must find a different location.
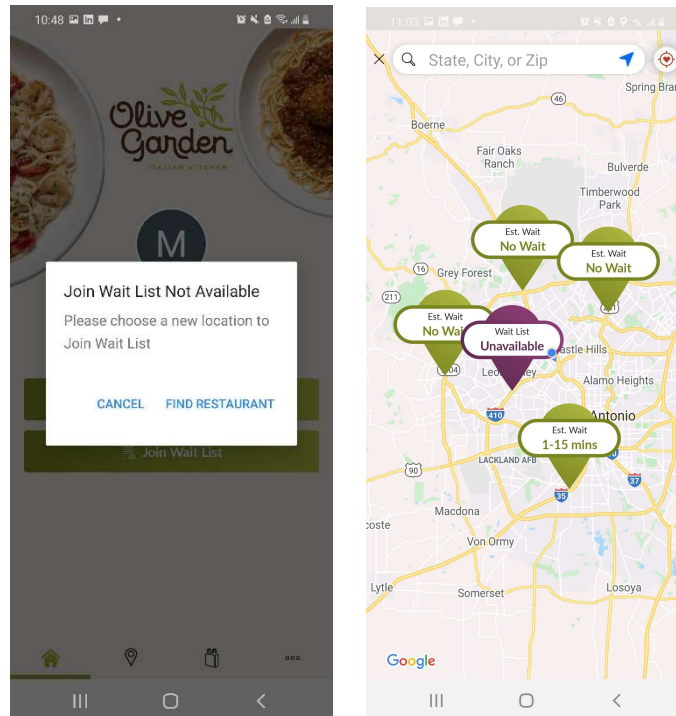
15.   The Olive Garden App stores data on items the user has expressed interest, such as favorite locations and stores data.
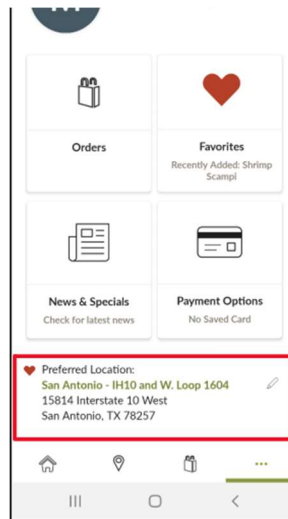
16.   The Olive Garden App stores data associated with one or more inventory attributes, such as whether there is any wait at a restaurant.
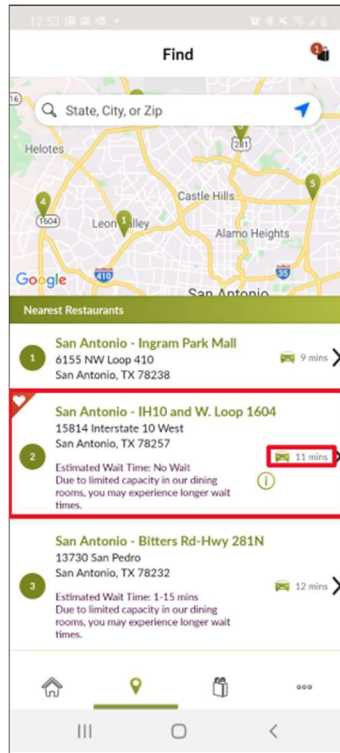
17.   The Olive Garden App includes notification criteria that define when notifications are to be delivered to the user's device, including an email notification.
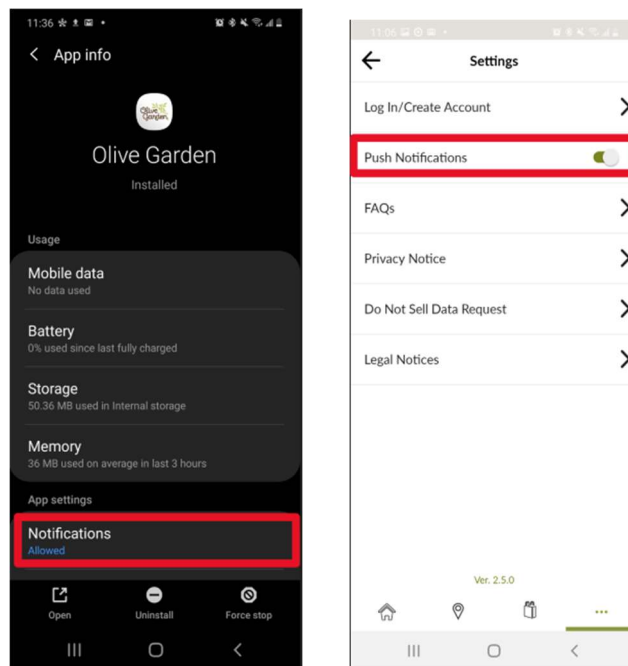
18.   The Olive Garden App generates a message for delivery to the user's device if a matching rule is triggered and a notification criteria is met.
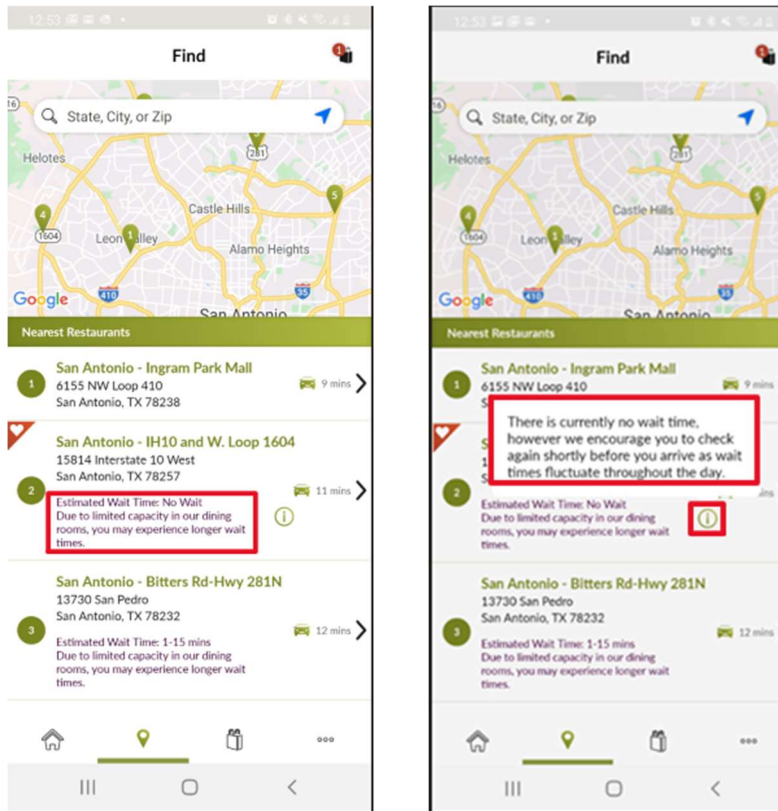
19.   The Olive Garden App generates a message that identifies available favorite locations that are open and is accepting online orders.
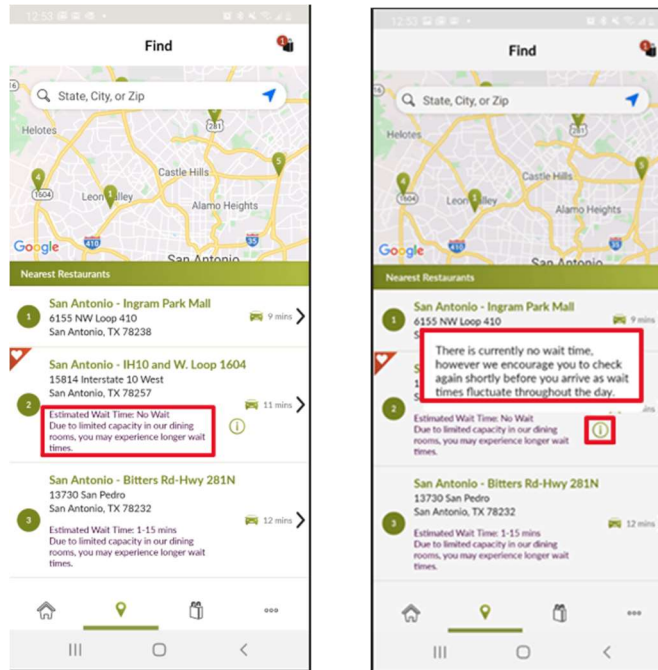
20.   If the appropriate criteria are met, the Olive Garden App delivers an appropriate message to the user's device.
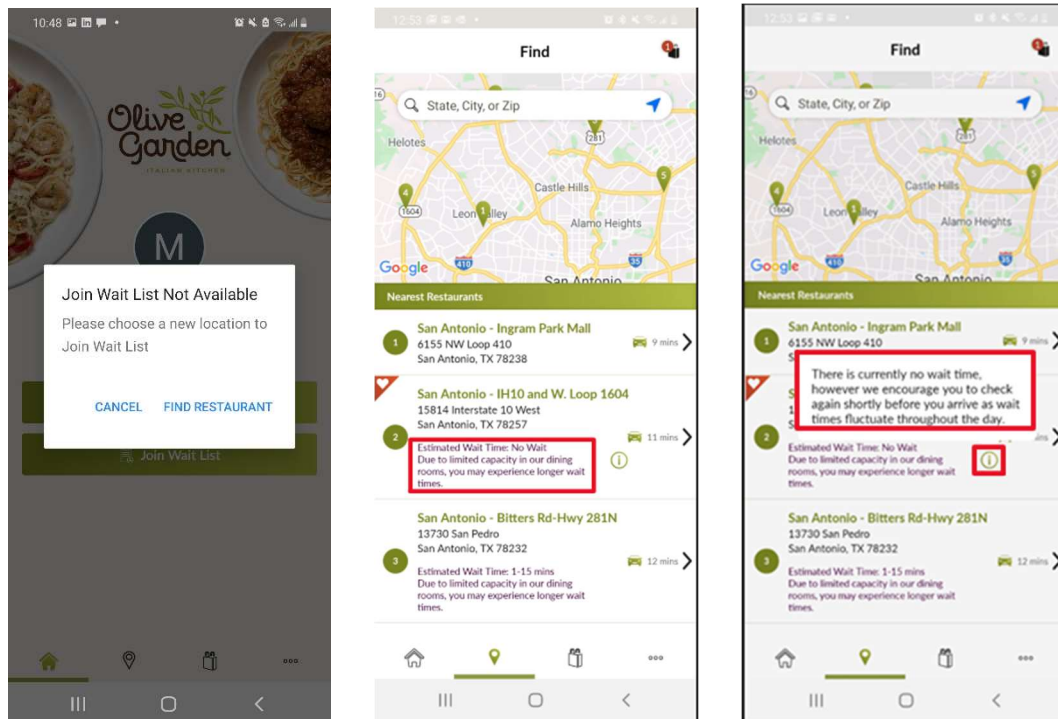
COUNT I
(Infringement of U.S. Patent No. 8,055,285)

21.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

22.   Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the "'285 Patent"), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the '285 Patent is attached as Exhibit PX-285.

23.   The '285 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

24.   Defendant has been and is now infringing one or more claims of the '285 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the Olive Garden server in the United States without authority.

25.   Defendant has also infringed the '285 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '285 Patent.

26.   Claim 1 recites:

1.   A method, comprising:

at a first time, receiving and storing an input in a user profile in a database, the input comprising consumer interest data;

at a second time distinct from the first time, obtaining data identifying a current location of the mobile communication device;

based on the input stored in the user profile and the current location of the mobile communication device, initiating a

search to locate information pertinent to the input;

receiving results derived from the search; and

in response to the input and the search, delivering, by a

notification server, information to the mobile

communications device.

27.   More particularly, Defendant infringes at least claim 1 of the '285 Patent. Defendant receives and stores an input in a user profile in a database, the input comprising consumer interest data. At a second time, data identifying a current location of the mobile communications device on which the Accused Instrumentality is installed is obtained. Based on the input and location, Defendant performs a search to locate pertinent information (e.g., nearby restaurants) and receive the results of such search, distance from mobile device. Defendant then provides the information to the mobile communications device.

28.   Aeritas has been damaged by Defendant's infringing activities.

COUNT II
(Infringement of U.S. Patent No. 9,390,435)

29.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

30.   Plaintiff is the owner, by assignment, of U.S. Patent No. 9,390,435 (the "'435 Patent"), entitled MIXED-MODE INTERACTION, which issued on June 12, 2016. A copy of the '435 Patent is attached as Exhibit PX-435.

31.   The '435 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

32.   Defendant has been and is now infringing one or more claims of the '435

Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS

and Android devices and the servers in the United States without authority.

33.   Defendant has also infringed the '435 Patent by encouraging users of the

Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to

practice the claims of the '435 Patent.

34.   Claim 1 recites:

1.   Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device

user a notification, the notification having an associated

notification criteria;

at a given time, determine a location of a mobile device;

based at least in part on a determined location of the mobile device

and the notification criteria, to provide to the mobile device

the notification, the notification being associated at the

mobile device with one of: an audible, visual and tactile

alert;

receive second data as a result of an input being received at the

mobile device following the notification;

retrieve information associated with the input and the determined

location of the mobile device; and

provide to the mobile device a response to the input, the response

based on the retrieved information.

35.   More particularly, Defendant infringes at least claim 1 of the '435 Patent.

On information and belief, Defendant employs a processor and computer memory holding

computer program instructions to perform the functions described above. Defendant

receives data indicating permission to provide a notification to a mobile device user in

accordance with notification criteria. At a given time, Defendant determines the location

of the mobile device. Based on the location and notification criteria, Defendant provides

at least a visual alert notification. Defendant receives second data as a result of an input

being received at the mobile device, retrieves information associated with the input and

location, and provides responsive information to the mobile device (e.g., restaurant

information).

36.   Aeritas has been damaged by Defendant's infringing activities.

COUNT III
(Infringement of U.S. Patent No. 9,888,107)

37.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth

herein.

38.   Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the

"'107 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6,

2018. A copy of the '107 Patent is attached as Exhibit PX-107.

39.   The '107 Patent is valid, enforceable, and was duly issued in full compliance

with Title 35 of the United States Code.

40.   Defendant has been and is now infringing one or more claims of the '107

Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS

and Android devices and the Olive Garden servers in the United States without authority.

41.   Defendant has also infringed the '107 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '107 Patent.

42.   Claim 5 recites:

> 5.   Apparatus, comprising:
>
> a processor;
>
> computer memory holding computer program instructions to:
>
> receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;
>
> at a given time, determine a location of a mobile device;
>
> based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert;
>
> receive second data as a result of an input being received at the mobile device following the notification;
>
> retrieve information associated with the input and the determined location of the mobile device; and
>
> provide to the mobile device a response to the input, the response based on the retrieved information;

wherein the computer program instructions comprise a rules engine that comprises first and second components, a first component that evaluates the notification criteria, and a second component that executes notification rules.

43.   More particularly, Defendant infringes at least claim 5 of the '107 Patent. On information and belief, Defendant employs a processor and computer memory holding computer program instructions to perform the functions described above. Defendant receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Defendant determines the location of the mobile device. Based on the location and notification criteria, Defendant provides at least a visual alert notification. Defendant receives second data as a result of an input being received at the mobile device, retrieves information associated with the input and location, and provides responsive information to the mobile device. On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

44.   Aeritas has been damaged by Defendant's infringing activities.

COUNT IV
(Infringement of U.S. Patent No. 10,362,160)

45.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

46.   Plaintiff is the owner, by assignment, of U.S. Patent No. 10,362,160 (the "'160 Patent"), entitled MIXED-MODE INTERACTION, which issued on July 23, 2019. A copy of the '160 Patent is attached as Exhibit PX-160.

47.   The '160 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

48.   Defendant has been and is now infringing one or more claims of the '160 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the Olive Garden servers in the United States without authority.

49.   Defendant has also infringed the '160 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '160 Patent.

50.   Claim 1 recites:

1.   Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device

user a notification, the notification having an associated

notification criteria;

at a given time, receive information identifying a determined

location of a mobile device;

based at least in part on a determined location of the mobile device

and the notification criteria, to provide to the mobile device

the notification, the notification being associated at the

mobile device with one of: an audible, visual and tactile

alert;

receive second data as a result of an input being received at the

mobile device following the notification;

> retrieve information associated with the input and the determined
>
> location of the mobile device; and
>
> provide to the mobile device a response to the input, the response
>
> based on the retrieved information.

51.   More particularly, Defendant infringes at least claim 1 of the '160 Patent. On information and belief, Defendant employs a processor and computer memory holding computer program instructions to perform the functions described above. Defendant receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Defendant determines the location of the mobile device. Based on the location and notification criteria, Defendant provides at least a visual alert notification, retrieves information associated with the input and location, and provides responsive information to the mobile device. On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

52.   Aeritas has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1.   declaring that the Defendant has infringed the '285, the '435, the '107, and the '160 Patents;

2.   awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '285, the '435, the '107, and the '160 Patents;

3.   awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and

4.   granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: October 9, 2020

Respectfully submitted,

/s/ Raymond W. Mort, III
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